



Ports-to-Plains Energy Summit

Lubbock, Texas
April 1, 2015

Thomas S. Mullikin
Research Professor



LUBBOCK, TEXAS

Oil and Gas Citizen Advisory Committee proposed recommendations to amend drilling ordinance to the City Council in December, 2014

On March 12, 2015, Lubbock City Council passed amendments to the oil and gas drilling ordinance

- 32 amendments were approved to the oil and gas ordinance
- Amendments included an increase in setback distance from 300 feet to 600 feet

STATES VS. LOCAL CONTROL

The recent surge in American shale energy production made the United States the world's leading natural gas producer in 2010. The United States will pass Saudi Arabia and Russia this year to become the largest oil producer as well.

This revolutionary expansion of oil and gas production in the United States has upended the status quo and forced public and private entities to reconsider long held assumptions about our nation's energy future.

STATES VS. LOCAL CONTROL

New technologies have allowed for production of shale energy in locations, including urban and suburban sites, that were not feasible in past decades.

This has prompted a movement to update laws and regulations to properly reflect new and emerging technologies that have changed the American energy landscape.

STATES VS. LOCAL CONTROL

Notably, there have been an ongoing series of conflicts about the role of local governments in overseeing and regulating energy development.

As state legislatures and the federal government have generally resisted calls to place onerous and unneeded regulatory burdens on the shale energy industry, frustrated fossil fuel opponents have urged local governments to consider harsh and constitutionally dubious regulations under the guise of “home rule” authority.

TENTH AMENDMENT

The Tenth Amendment provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

HOME RULE

The prevailing understanding of the limited role of local governments was enumerated by nineteenth century Judge and legal scholar John Forrest Dillon, whose theory on local authority would be known as “Dillon’s Rule.” Dillon’s Rule held that local governments “may engage in an activity only if it is specifically sanctioned by the state government.”

The rigidity of the Dillon’s Rule gave way to more flexible arrangements in the early twentieth century as states adopted “home rule provisions” that allowed municipal governments to address matters of local concern, without first receiving approval from the state legislature.

These efforts have caused the home rule rights of local jurisdictions to come into conflict with the rights of energy producers and mineral owners to exploit their mineral resources in an economically productive way in accordance with state law. Also, these aggressive local regulations would often outpace the ability of local governments, because such sweeping regulatory efforts are more effectively performed by state agencies.

These home rule controversies are working their way through courts and legislative bodies in a number of states, as this debate has become one of the most actively discussed policy issues in energy producing states.

Proposed Texas Legislation

House Bill 40 – Relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state.

•Status: House Energy Resources Committee

- Committee held public hearing on March 23
- Passed Committee on March 30
 - *with a provision recognizing existing city ordinances in place five years or longer as "commercially reasonable" if oil and gas activities have continued under the local rules*

Senate Bill 1165 – (Companion to HB 40)

•Status: Committee on Natural Resources & Economic Development held public hearing on March 24 and Committee voted favorably without amendments on March 25

House Bill 539 – Relating to the procedural requirements for the adoption of a municipal regulation, limitation, or prohibition, on the production, storage, or transportation of oil or natural gas; authorization fee

•Requires cities pay the state for lost revenue resulting from any local restrictions on oil and gas operations

•Status: House Energy Resources Committee

- Committee held public hearing on March 23

Importance of Education and Perception of Industry

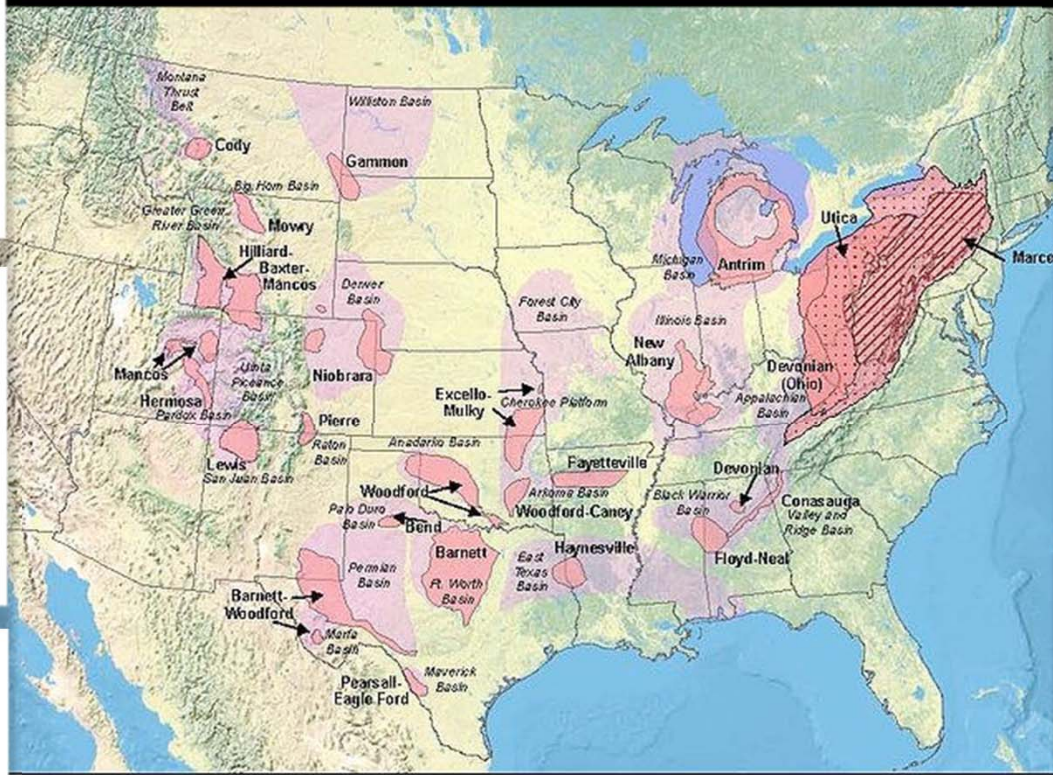
Despite the benefits of shale energy production, there are many activists across the United States that are actively opposed to shale energy development for ideological reasons

These groups are well-funded and are establishing bases of operation across the United States
Including: Texas, Oklahoma, Colorado, and other states that have historically supported energy production.



Importance of Education and Perception of Industry

- Local activism has impacted local elections and government actions in various states
- The impact of local activism can be seen through moratoriums, bans on fracking and resolutions passed supporting moratoriums.



United States Shale Gas Plays



THE REAL FACE OF THE OPPOSITION



“...The Park Foundation has, over the last decade or so, invested \$4,963,000 connected with the sourcing of Ian Urbina’s “Drilling Down” series in the *New York Times*.”

- Energy in Depth “Connecting the Dots on NYT and Park Foundation” February 14, 2012



Moore Foundation - \$5.5 Billion in Assets



Tides Foundation - \$153 Million in Assets



Goldman Fund - \$270 Million in Assets

THE OPPOSITION

Shale energy production has become a leading focus of these foundations and their donors:

- Local environmentalist activity in the Marcellus Shale has been particularly intense due to the close proximity of major East Coast media markets
- Marcellus activists have engaged local and state decision makers through various organizations supported by foundations such as the Clean Water Fund and Cornell University

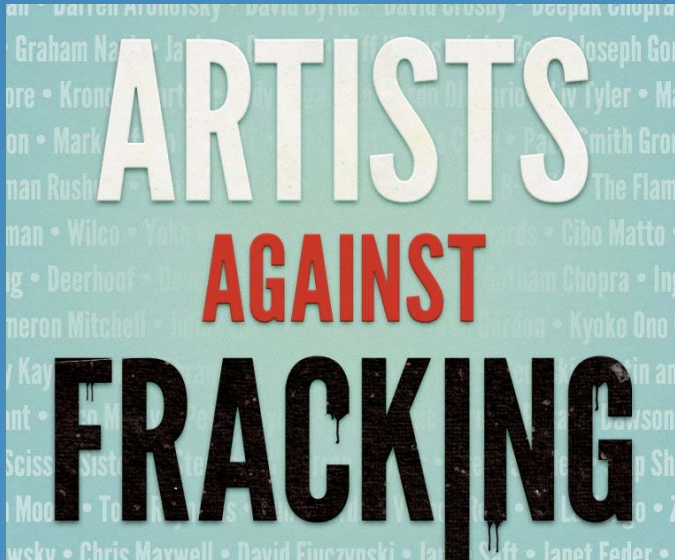
THE HEINZ ENDOWMENTS		
Howard Heinz Endowment • Vira I. Heinz Endowment		
Environment		
OVERVIEW GOALS AND STRATEGIES GRANTS AWARDED STAFF THE BREATHE PROJECT GRANT-MAKING POLICY ON GREEN BUILDING		
Clean Water Fund	\$45,000	2011
to build a broad network in Pennsylvania to address policies on Marcellus Shale gas extraction		
Community Foundation of Greater Johnstown	\$90,000	2011
to support program costs including staff salary, community education and water testing for Three Rivers Waterkeeper		
Community Foundation of Greater Johnstown	\$840,000	2011
to expand the FracTracker web site and citizen stewardship as a core Marcellus Shale strategy		
Cornell University	\$50,000	2011
for research and outreach in western Pennsylvania on local decision-making to regulate natural gas drilling		



OPPOSITION – HOLLYWOOD



OPPOSITION – HOLLYWOOD



The Celebrity Campaign Against Fracking: How Yoko Ono and Sean Lennon Rallied an Outcry

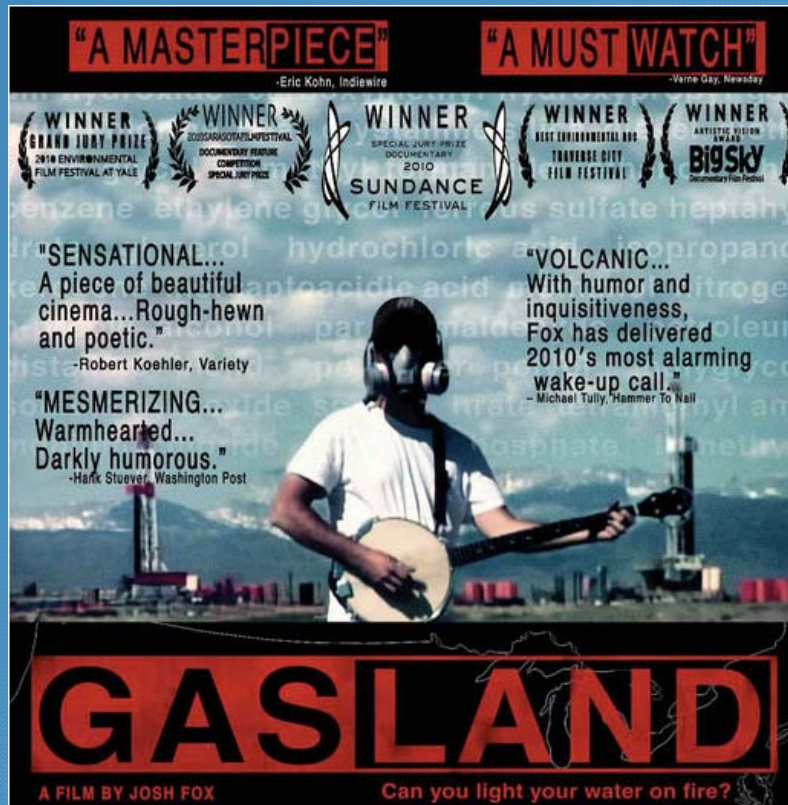
OPPOSITION – HOLLYWOOD

“...With its jolting images of flammable tap water and chemically burned pets, New York theater-director-turned-documentarian Josh Fox’s Sundance-feted shocker makes an irrefutable case against U.S. corporate “fracking”—the Haliburton-hatched scheme of natural gas drilling in and around the nation’s shale basins...”

- Review of *Gasland* in Village Voice, September 14, 2010

Texas District Court ruled incident as a fraud when it was revealed in court that the activist “... **attach(ed) a garden hose to a gas vent – not to a water line – and then light and burn the gas from the end of the nozzle of the hose. The demonstration was not done for scientific study but to provide local and national news media a deceptive video, calculated to alarm the public into believing the water was burning ... [and] alarm the EPA.**”

- “Fiction Masquerading as News in the Oil and Gas Shale World,” Forbes, July 10, 2013



LOCAL / NATIONAL OPPOSITION GROUPS

GREENPEACE

Greenpeace USA



EARTHJUSTICE
Because the earth needs a good lawyer



**North Central Texas
Communities Alliance**

Education - Communication - Mobilization
In The
Barnett Shale



TXSHARON

Bluedaze

DRILLING REFORM

SHALETEST
Environmental Testing



**SIERRA
CLUB**
FOUNDED 1892



**TEXAS CAMPAIGN
FOR THE ENVIRONMENT**



**Friends of
the Earth**



**CLEAN
RESOURCES**

OPPOSITION

Aggressive, Well-funded, Technically supported vocal minority using sympathetic media and regulators to achieve their objectives.

Opposition tactics include use of:

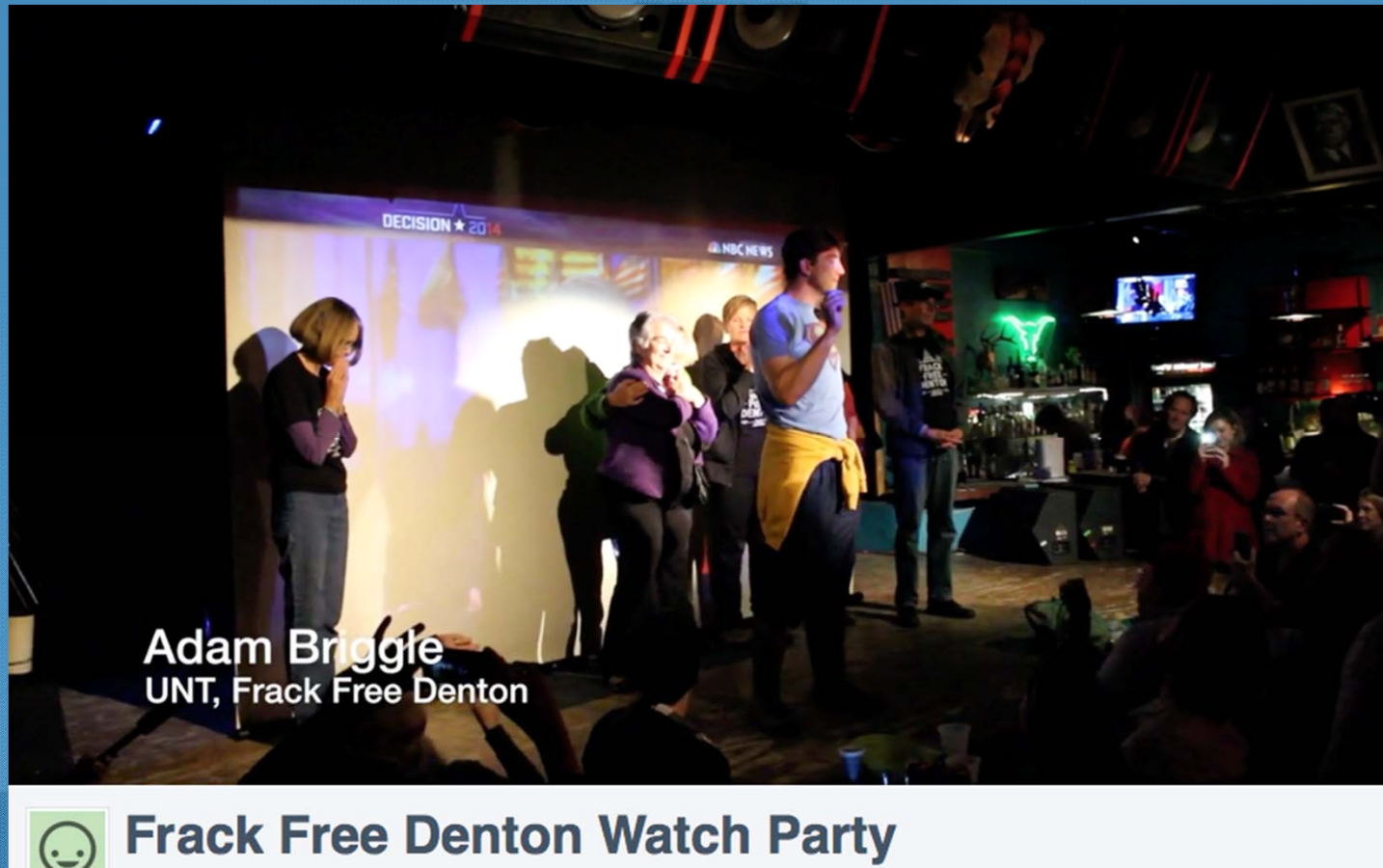
1. Free / Earned media
2. Social media
3. Campuses / Students / Professors
4. Trial lawyer support

Importance of Education and Perception of Industry

Some may ask...

- *With the benefits of shale energy, who would not support the industry?*
- *Why do we care if some people in Hollywood or New York do not like us?*

Importance of Education and Perception of Industry



(Video of Frack Free Denton celebration. - <http://vimeo.com/111065477>)

Importance of Education and Perception of Industry

(Why do we care if some people don't like us?)

- While the majority of Texans may support shale energy and understand the benefits, a small group of anti-fossil fuel activists can shape the discussion in local communities.
- These activist groups are well funded and drive misinformation into local communities to frighten local residents and give the impression that energy production threatens their health and safety.
- **This false choice underpins the success of various anti-shale campaigns across the United States.**



Importance of Education and Perception of Industry

Local Activist Tactics

- **Infiltrating communities through universities and activist professors**
 - Adam Briggie, UNT Professor leader of Frack Free Denton
- **Amending ordinances with strict regulations**
 - Municipalities are no longer considering bans because of the risk of litigation or are struggling in court
 - Mora County, New Mexico; Cuyahoga County, Ohio; Colorado
 - Instead city's are reviewing their drilling ordinances and implementing unnecessary and harsh regulations
 - Large setback distances create "de facto" bans
 - 2,200 foot setback distance – Stillwater, Oklahoma (considering)
 - 1,500 foot setback distance – City of Dallas
- **Activists are candidates in local elections**
 - Activists are elected to City Council
 - Kevin Roden, Former UNT Professor and current City Councilman
 - Amber Briggie, Candidate in Denton Council Race
 - Low turnout rates for local election
 - Denton – For the proposed ban to be brought before city council, the petition only needed 596 signatures

Importance of Education and Perception of Industry

Possible Impacts on Cities

With the implementation of a ban or strict regulations, cities risk the possibility of litigation.

Local governments may have to pay sizeable legal fees, which could amount to municipal bankruptcy.

- Community Environmental Legal Defense Fund Executive Director Thomas Linzey said “the first advice he gives to interested towns is that they must be willing to accept the worst-case scenario: municipal bankruptcy. If they're not on board, he won't work with them”
- *“Hydraulic Fracturing: Scrapped drilling ban leaves open window for local rules,” E&E, January 22, 2105*

Importance of Education and Perception of Industry

- How should energy companies (of all sizes) react to this phenomenon?
- Energy stakeholders must actively engage their communities and be willing and able to speak out on the benefits of shale energy:
 - Such as the economic and environmental benefits
 - And also the incredible safety record of the industry in Texas and other producing states

Importance of Education and Perception of Industry

- ENGAGE those in your community to educate on key issues and understand their concerns
- Also, it is critical that the energy industry is able to speak to the concerns of residents in energy producing areas
- Issues such as water usage, seismic issues, noise, etc. are legitimate questions that warrant a substantive answer

What can you do?

- Become an advocate for American shale energy
- Join us in the fight to promote a safe, prosperous, and environmentally responsible American energy future
- Volunteer to speak out in your community and arrange opportunities to speak to local organizations about the impact of shale energy and the incredible safety record of the industry in Texas and other producing states

TOM MULLIKIN BIO

“TOM MULLIKIN, AND THOSE LIKE HIM WHO HAVE CLIMBED MANY OF THE WORLD'S GREAT SUMMITS, IS A MODEL OF PERSEVERANCE.” - MAJ. GEN. JAMES E. LIVINGSTON, USMC (RET.), MEDAL OF HONOR RECIPIENT"

Having led environmental expeditions to every continent, Tom Mullikin brings a unique blend of first-hand experience, critical legal analysis, and community and stakeholder involvement to the leadership of his firm's government, policy and regulatory affairs team. His extensive travel, including multiple trips to the Arctic and Antarctic, provide context to his work as a senior environmental attorney. Tom partners with clients to address the practical social, political, and environmental impacts of climate change.

Tom presently serves as Research Professor at Coastal Carolina University and previously served as Associate Director of Law and Policy Doctorate Program at Northeastern University. He has been recognized as a Distinguished Lecturer on climate change at the Illinois ' Governors State University and at Loyola University New Orleans, presented in the University of the Ozarks Distinguished Speaker Series, the University of Edinburgh, Oxford University, England, Trinity College, Ireland, St. Petersburg State University, Russia and the Institute of Geology at Tallinn University of Technology. He has spoken on the intersection of the economy and our environmental challenges at international conferences such as the Woodrow Wilson Center Cross Border Energy Forum, and in Australia, Russia, Estonia, Taiwan, Peru, Argentina, Antarctica, Namibia, the Czech Republic, and across the United States in conjunction with industry associations and state and regional chambers of commerce. For his work in 2013-2014, Tom was recognized by the Fijian Permanent Secretary of Lands and Mineral Resources Tevita Boseiwaqa for leading a team of experts on behalf of the UNDP-ABA and serving as a liaison to the Fijian government in drafting expansive comments and recommendations for legislation aimed at protecting the Pacific island nation's rich mineral resources.

In 2005, Tom led a team of researchers and environmental experts on an Antarctica expedition studying the effects of climate change on the polar regions. He told the story of this expedition in a video documentary, *Climate Change: Global Problems, Global Solutions*, which received widespread acclaim in both business and environmental circles, and was broadcast on New Hampshire Public Television, with a Boston-area viewership of more than 2.4 million households. He has led subsequent expeditions to the Namib Desert of Africa, the Amazon River Basin of Peru, and the Great Barrier Reef of Australia to highlight the global effects of climate change. He highlighted these expeditions in his subsequent documentary, *The Whole Truth*, which was featured at the Charleston Film Festival and broadcast on the Halogen Network to over 13 million homes in the United States. *The Whole Truth* received acclaim through the award of a Telly Award Bronze Medal in the feature documentary category and a Bronze in the social issues category. Tom also received a Telly Award Bronze Medal in the educational category for producing his video, *An Introduction to Climate Change*. The Telly Awards recognize the best local, regional, and cable television commercials and programs, as well as the finest video and film productions. In 2010, Tom undertook additional investigative expeditions to the Amundsen-Scott South Pole Station in Antarctica, the Eyjafjallajökull volcano in Iceland and the highest peak on Africa, Mt. Kilimanjaro. Tom has studied water related concerns in certified scuba dives in all oceans on earth and climbed to the summit of the highest mountains on four continents, Mt. Elbrus (Europe), Mt. Kilimanjaro (Africa), Mt. Kosciuszko (Australia) and Mt. Aconcagua (South America).

TOM MULLIKIN BIO

Tom is the author of *The Maxims of Politics: Making Government Work*, which was named the Award-Winner in the Business Category of the 2010 National Indie Excellence Awards, recognizing outstanding achievement in independently published books. Tom has also authored *Profiles in Optimism: Stories of Brave Individuals Who Looked at Adversity and Saw Hope*, *Sportsman Environmentalist*, *Global Solutions: Demanding Total Accountability for Climate Change*, and *Truck Stop Politics: Understanding the Emerging Force of Working Class America*. He has been widely published in both legal and mainstream periodicals, including *UCLA Journal of Environmental Law and Policy*, *Georgetown International Environmental Law Review*, *Campaigns and Elections Magazine*, *South Carolina Jurisprudence*, *Navigating the Government Contracts Process*, *Vital Speeches of the Day* and *Well Servicing Magazine*. Further, he has been quoted for his experience in both the law and the environment by *Los Angeles Times*, *Newsday*, *Associated Press*, *St. Petersburg (Fla.) Times*, *Charlotte Observer*, *Richmond Times Dispatch*, *Roanoke-Chowan News-Herald*, *Duluth News Tribune*, *Hibbing Daily Tribune*, *Wichita Eagle*, *San Antonio Express News*, *Spectrum & Daily News*, *Business North*, *Business News Publishing Co.*, *Rocky Mountain News*, *West Virginia Public Broadcasting*, *Salt Lake Tribune*, *Post and Courier*, *Hamilton Spectator*, *Cleveland Daily Banner*, *Natural Awakenings Charlotte*, *World Defense Review*, *Canada Free Press*, and *Huntinamibia*. He also has appeared on numerous broadcast networks and their affiliates, including CSPAN, PBS, FOX, NBC, CBS and ABC.

Tom previously served as Chief Counsel and Vice President for Public Affairs at one of the largest environmental services companies in the world. He has served on state legislative and congressional staff, and as an advisor and campaign manager to senior members of Congress and U.S. Presidential candidates from both the Republican and Democratic parties. Tom has obtained certification as an Environmental Management Systems Auditor.

Tom currently serves as Brigadier General of the South Carolina State Guard. Previously he served with the United States Army Judge Advocate General Corps, USAR, where he was the Assistant Staff Judge Advocate for the 360th Civil Affairs Brigade (Airborne), United States Army Civil Affairs and Psychological Operations, United States Army Special Operations Command. For his service, he has been awarded, among other honors, the Meritorious Service Medal, Army Achievement Medal, Global War on Terror Service Medal, Meritorious Service Medal (JSD), Medal of Merit (State Guard) and Honorary Green Beret by Special Forces (S.C. Chapter). Tom is a member of, and an award recipient from, the U.S. Counterterrorism Advisory Team. Tom serves on a variety of foundations and boards, including the board of directors for the U.S. Army Special Forces Foundation (S.C. Chapter). Tom is a member of, and an award recipient from, the U.S. Counterterrorism Advisory Team. Tom has also been awarded airborne parachute jump badges from Germany, Serbia, Croatia, Luxembourg, Switzerland and the Royal Laotian Parachutist Badge. Tom has been awarded the title of Ironman Outdoors (Sandhills chapter). Additionally, Tom is a U.S. Army Master Fitness Trainer and Self Defense Instructor (Black Belt in Karate) and he serves as a member of the Richland County (S.C.) Sheriff's Department Underwater Recovery (dive) Unit. Tom has received the Order of the Palmetto, the highest civilian honor bestowed by the State of South Carolina.!

Tom resides in Camden, S.C. with his wife Virginia Ann and four children Mary Elizabeth (Van Horn), Alexandra (Tomlinson), Thomas, Jr., and Margaret Charles.

"SIR ERNEST SHACKLETON NEEDED A MAN LIKE THOMAS STOWE MULLIKIN " - HUMAN EVENTS (2012)

TOM MULLIKIN



CLEAN
RESOURCES